

June 5, 2014

The Honorable Bill Shuster
Chairman, Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

The Honorable Nick Rahall
Ranking Member, Transportation & Infrastructure Committee
2163 Rayburn House Office Building
Washington, DC 20515

CC: All Members of Congress

Dear Chairman Shuster and Ranking Member Rahall:

The undersigned organizations commend your continued oversight on the proposal by the U.S. Environmental Protection Agency and Army Corps of Engineers to increase their authority under the Clean Water Act, and urge Congress to stop the proposed expansion of federal jurisdiction and limit EPA's ability to unilaterally halt job-creating projects. EPA and the Army Corps of Engineers' recent activities will federalize our nation's waters and public and private lands, resulting in dramatic impacts on job creation and economic investment and growth.

Nearly every sector of the economy – including agriculture, construction, housing, manufacturing, utilities, energy production, and transportation – is immediately affected by how EPA and the Corps interpret and implement the CWA. Just as importantly, private property owners who want to develop their own land, as well as state and local governments building critical infrastructure, must also frequently obtain CWA permits.

Twice the Supreme Court has affirmed that both the U.S. Constitution and the CWA place limits on federal authority over intrastate waters, and Congress has declined to alter that careful balance between federal and state regulation. Yet EPA and the Corps are now attempting to substitute their own judgment for that of Congress, and to unlawfully expand the scope of federal jurisdiction beyond anything that has ever existed under the CWA. We strongly support the Committee's efforts to ensure that the agencies' regulations defining their authority adhere to Congressional intent, and we pledge to work with you on this critically important matter.

We also want to register our continuing support of efforts by the Committee to address other regulatory overreach by the agencies. Nowhere is this more prominent than in Section 404 of the CWA, where EPA has already provided two telling examples of what can happen to U.S. projects that require federal CWA permits. Notably, EPA for the first time ever recently used Section 404 to retroactively veto a valid CWA permit, thereby halting an on-going lawful operation. EPA then used Section 404 to prospectively veto another project before the companies involved could even apply for a permit, but after hundreds of millions of dollars had been spent in up-front capital expenditures.

If EPA is allowed to continue in this manner, and indeed to expand its authority over more land, it will have a devastating impact on U.S. investment and job creation, as companies will not be able to rely on the rule of law in the United States and will not invest in U.S. projects.

The undersigned organizations are committed to the protection and restoration of America's water resources. And while the environmental protections provided by the CWA are vital, so too is the rule of law and the ability of investors to rely on the U.S. permitting process. Congress must act to protect both by requiring federal agencies to recognize the legal limits to CWA authority, and ensuring that EPA exercises its CWA authority in a manner consistent with due process and fundamental fairness.

It is critical that the federal government use the legally promulgated processes under the CWA and National Environmental Policy Act to make fair, informed decisions about job-creating projects. It is likewise vital that, once companies receive their permits, the companies – as well as the investors and employees relying on them – can rely on those permits to not be revoked at any time for any reason. Finally, it is extremely important that EPA and the Corps not be permitted to arrogate authority to themselves that Congress never intended.

We therefore ask that you stop EPA and the Corps from finalizing their proposed rule defining their authority under the CWA, and limit EPA's ability to act under Section 404 until after the NEPA and 404 environmental review processes are completed but before a permit is issued. Such limitations would provide for robust environmental protection, transparency and certainty for the regulated community, and economic investment and growth.

Sincerely,

Agribusiness Association of Kentucky
Agribusiness Council of Indiana
Agricultural Retailers Association

Alabama Associated Builders and Contractors
Alabama Cattlemen's Association
Alaska Associated Builders and Contractors
American Coke & Coal Chemicals Institute
American Concrete Pressure Pipe Association
American Exploration & Mining Association
American Farm Bureau Federation
American National CattleWomen
American Petroleum Institute
American Road & Transportation Builders Association
Arizona Builders' Alliance
Arizona Cattle Feeders' Association
Arizona Cattle Growers' Association
Arizona Mining Association
Arkansas Associated Builders and Contractors
Arkansas Cattlemen's Association
Associated Builders and Contractors
Associated Equipment Distributors
Baltimore Metro Chapter, Associated Builders and Contractors
Beefmaster Breeders United
California Cattlemen's Association
Carolinas Associated Builders and Contractors
Carroll Co. Farm Bureau
Central Florida Chapter, Associated Builders and Contractors
Central Ohio Chapter, Associated Builders and Contractors
Central Pennsylvania Chapter, Associated Builders and Contractors
Central Texas Chapter, Associated Builders and Contractors
Chariton County Farm Bureau
Colorado Cattlemen's Association
Colorado Livestock Association
Colorado Mining Association
Connecticut Chapter, Associated Builders and Contractors
Cornhusker Chapter, Associated Builders and Contractors
Crop Protection Association of North Carolina
Dairy Producers of New Mexico
Delaware Chapter, Associated Builders and Contractors
Dyno Nobel Inc.
Eastern Pennsylvania Chapter, Associated Builders and Contractors
Empire State Chapter, Associated Builders and Contractors
Far West Agribusiness Association
Florida Associated Builders and Contractors
Florida Cattlemen's Association
Florida East Coast Chapter, Associated Builders and Contractors
Florida Fertilizer & Agrichemical Association
Florida First Coast Chapter, Associated Builders and Contractors
Florida Golf Coast Chapter, Associated Builders and Contractors
Georgia Agribusiness Council
Georgia Associated Builders and Contractors

Georgia Cattlemen's Association
Georgia Urban Ag Council
Greater Michigan Chapter, Associated Builders and Contractors
Hawaii Cattle Council
Hawaii Chapter, Associated Builders and Contractors
Idaho Cattle Association
Illinois Beef Association
Illinois Chapter, Associated Builders and Contractors
Illinois Coal Association
Illinois Fertilizer & Chemical Association
Independent Petroleum Association of America
Indiana Beef Cattle Association
Indiana Coal Council
Indiana/Kentucky Chapter, Associated Builders and Contractors
Industrial Minerals Association – North America
Inland Pacific Chapter, Associated Builders and Contractors
Institute of Makers of Explosives
Iowa Associated Builders and Contractors
Iowa Cattlemen's Association
Irrigation Association
Kansas Livestock Association
Kentucky Coal Association
Keystone Chapter, Associated Builders and Contractors
Lignite Energy Council
Los Angeles/Ventura Chapter, Associated Builders and Contractors
Luman Offutt Farms, Inc.
Metro Washington Chapter, Associated Builders and Contractors
Michigan Agri-Business Association
Michigan Associated Builders and Contractors
Michigan Cattlemen's Association
Minnesota Crop Production Retailers
Minnesota/North Dakota Chapter, Associated Builders and Contractors
Mississippi Cattlemen's Association
Mississippi Chapter, Associated Builders and Contractors
Missouri Agribusiness Association
Missouri Cattlemen's Association
Missouri Levee & Drainage District Association
Montana Agricultural Business Association
Montana Stock Growers Association
National Association of Manufacturers
National Association of REALTORS®
National Cattlemen's Beef Association
National Industrial Sand Association
National Mining Association
National Sorghum Producers
National Stone, Sand and Gravel Association
Navajo Nation

Nebraska Agri-Business Association
Nebraska Cattlemen's Association
Nevada Cattlemen's Association
Nevada Chapter, Associated Builders and Contractors
New Jersey Chapter, Associated Builders and Contractors
New Mexico Associated Builders and Contractors
New Mexico Cattle Growers' Association
New Mexico Federal Lands Council
New Mexico Wool Growers, Inc.
New Orleans/Bayou Chapter, Associated Builders and Contractors
North Carolina Cattlemen's Association
North Dakota Stockmen's Association
North Florida Chapter, Associated Builders and Contractors
Northern Alabama Chapter, Associated Builders and Contractors
Northern California Chapter, Associated Builders and Contractors
Northern Ohio Chapter, Associated Builders and Contractors
Ohio Agribusiness Association
Ohio Cattlemen's Association
Ohio Coal Association
Ohio Valley Chapter, Associated Builders and Contractors
Oklahoma Agribusiness Retailers Association
Oklahoma Chapter, Associated Builders and Contractors
Oregon Cattlemen's Association
Oregonians for Food & Shelter
Pacific Northwest Chapter, Associated Builders and Contractors
Pelican Chapter, Associated Builders and Contractors
Pennsylvania Cattlemen's Association
Pennsylvania Coal Alliance
Portland Cement Association
Public Lands Council
Ray-Clay Farms, Inc.
Responsible Industry for a Sound Environment
Rhode Island Chapter, Associated Builders and Contractors
Rocky Mountain Chapter, Associated Builders and Contractors
San Diego Chapter, Associated Builders and Contractors
Schertz Aerial Service, Inc.
South Carolina Fertilizer & Agrichemicals Association
South Dakota Agri-Business Association
South Dakota Cattlemen's Association
South Texas Chapter, Associated Builders and Contractors
Southeast Michigan Chapter, Associated Builders and Contractors
Southeast Texas Chapter, Associated Builders and Contractors
Southeastern Livestock Network
Southern California Chapter, Associated Builders and Contractors
Southern Crop Production Association
Southwest Council of Agribusiness
Tennessee Cattlemen's Association
Texas Ag Industries Association

Texas and Southwestern Cattle Raisers Association
Texas Associated Builders and Contractors
Texas Cattle Feeders Association
Texas Coastal Bend Chapter, Associated Builders and Contractors
Texas Gulf Coast Chapter, Associated Builders and Contractors
Texas Mid-Coast Chapter, Associated Builders and Contractors
Texas Vegetation Management Association
Texas Wildlife Association
TEXO, the Construction Association
The Fertilizer Institute
The McGregor Company
U.S. Chamber of Commerce
Utah Cattlemen's Association
Utah Chapter, Associated Builders and Contractors
Utah Mining Association
Virginia Agribusiness Council
Virginia Cattlemen's Association
Virginia Chapter, Associated Builders and Contractors
Virginia Christmas Tree Growers Association
Virginia Green Industry Council
Virginia Nursery & Landscape Association
Virginia State Feed Association
Virginia State Horticultural Society
Washington Cattle Feeders
Washington Cattlemen's Association
Waters Farms, Inc.
WePeCo, Inc.
West Virginia Cattlemen's Association
West Virginia Chapter, Associated Builders and Contractors
Western Michigan Chapter, Associated Builders and Contractors
Western Peanut Growers Association
Western Pennsylvania Chapter, Associated Builders and Contractors
Western Washington, Associated Builders and Contractors
Wyoming Ag Business Association
Wyoming Crop Improvement Association
Wyoming Ethanol
Wyoming Wheat Growers Association